



March 16, 2006

**VIA E-MAIL** (c/o Mr. Dexter Thomas)

EDI Comments  
PACA Branch  
Fruit and Vegetable Programs  
Agricultural Marketing Service  
U.S. Department of Agriculture  
Room 2095-S  
1400 Independence Avenue, SW  
Washington, DC 20250-0242

Dear Mr. Thomas:

The California Strawberry Commission (Commission) appreciates the U.S. Department of Agriculture's (USDA) request for comments about the need to update the Perishable Agricultural Commodities Act (PACA) regulations to reflect current technological advancements in invoicing and noticing.

The California Strawberry Commission was established under California law and represents all the 600+ growers, shippers, and processors of strawberry fruit in California. California produced 88% of the nation's strawberry fruit in 2004 with a farm-gate value of \$1.2 billion. Many of our members are licensees under PACA or are growers who directly benefit from PACA regulations that insure payment of the perishable commodities shipped in interstate commerce.

We agree that new technological advancements such as electronic data interchange (EDI) have created the opportunity for ambiguity and the need for USDA to update its regulations to maintain the statutory duty of PACA. We wish to echo the comments provided by Driscoll's (one of our members) regarding the rich legal history that confirms that electronic billing may serve as the ordinary and usual billing method so that trust notification may be conveyed electronically, that action (intentionally or unintentionally) to defeat the trust by blocking the transmission of the trust language is a violation of a trustee's duty of loyalty, and that the USDA should take action to remedy current deficiencies.

We wish to confirm that our members have experienced problems with EDI and been put at greater risk from the deficiencies created by some EDI systems. Some of the issues that need to be addressed include: (1) the buyer either willingly or through oversight does not receive the entire electronic transmission (EDI) invoice, (2) the buyer does not download the trust information, (3) the buyer does not opt to receive or impedes receipt of this information, (4) the buyer does not buy the data field from the EDI service



provider that allows the inclusion of the trust language, or (5) the EDI service provider does not translate the field that contains the trust language.

The “advance notice of proposed rulemaking” also raises questions about costs. The whole point of the trust is to favor sellers of produce over other creditors -- in effect, imposing costs to protect sellers. Moreover, once PACA makes clear what the rules are, then the necessary systems will develop to accommodate the trade practices. The uncertainty in the current system creates many of the costs PACA now cites. A code of fair trading practices is imperative and will itself reduce costs over time.

To maintain the proven success of PACA, the regulations should be amended as soon as possible to evolve with the changes in business practices. If PACA concludes that it must delay implementation of EDI rules, it should confirm that when EDI systems reject the trust language buyers must accept trust notices sent by alternative means.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, which appears to read 'Rick Tomlinson'. The signature is fluid and cursive, with the first and last names being more prominent.

Rick Tomlinson  
Director of Government Affairs